

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119,
Port Charlotte, Florida
Minutes of Regular Meeting
March 9, 2015 @ 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:30 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess
Michael Gravesen
Ken Chandler
Stephen Vieira

ABSENT

Paul Bigness

ATTENDING

Joshua Moye, Assistant County Attorney
Gayle Moore, Recording Secretary

APPROVAL OF MINUTES

The minutes of February 2nd and 9th were approved as circulated.

ANNOUNCEMENTS

Chair Hess indicated that today's agenda material would be presented as a whole, along with public comment, then each section motioned individually.

PETITIONS:

**Unified Land Development
Code Revisions, Phase II.2**

Legislative

Countywide

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis of the petition with a recommendation of Approval, based on the reasons stated in the staff report dated February 24, 2015. Ms. Shao gave brief details on the method of presentation of these items to the Board, noting that the first Phase had been heard last September and approved by the Commission on Nov. 25th. **Ms. Shao** noted that this is the Phase II.2 segment of the revisions process, and then reviewed the primary purpose of the changes for each of the following individual sections of the code:

Land Development Regulations

Table of Contents

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by adding Article IV, Site Design Standards and Requirements; deleting Section 3-9-8, Establishment of Zoning Districts and Official Zoning Atlas; renumbering Section 3-9-9, Rules for Interpretation of District Boundaries to Section 3-9-8; renumbering Section 3-9-10, Legal Nonconformities to Section 3-9-9; and renumbering

Section 3-9-11, Amendments to Section 3-9-10; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Buffers, Landscaping,
and Tree Requirements**

Legislative

Countywide

An Ordinance of the Board of County Commissioners of Charlotte County, Florida, amending Part III Land Development and Growth Management, Chapter 3-5, Planning and Development, of the Code of Laws and Ordinances of Charlotte County, Florida, by deleting Article XVIII Landscaping and Buffers; amending Chapter 3-2, Buildings and Building Regulations, of the Code of Laws and Ordinances of Charlotte County, Florida, by deleting Article IX Tree Requirements; and amending Article IV. Site Design Standards and Requirements of Chapter 3-9, Zoning, by creating new Section 3-9-91, Buffers, Landscaping and Tree Requirements, new Section 3-9-91.1, Buffers, new Section 3-9-91.2, Landscaping, and new Section 3-9-91.3, Tree Requirements; providing for revised buffers and landscaping requirements, standards, and maintenance; providing for revised tree requirements, standards, and maintenance; providing for conflict with other ordinances; providing for severability; and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Sec. 3-9-11, Amendment

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by revising Section 3-9-11, Amendments; providing for requirements and procedure that Land Development Regulations and the Office Zoning Atlas may be amended or repealed; providing for standards for approval; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

Revisions to Section 3-9-69,

Conditional Uses and Structures

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by revising Section 3-9-69, Conditional Uses and Structure; providing for revised conditions for boat, travel trailer and motor vehicle sales and rentals, including recreational vehicles and campers; providing for revised conditions for boat, travel trailer and motor vehicle repair and services, including recreational vehicles and campers; providing for revised conditions for noncommercial vehicle rental; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Revisions to Section 3-9-77, Manufactured Homes
and Recreational Vehicles**

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by revising Section 3-9-77, Manufactured Homes and Recreational Vehicles; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Revisions to Section 3-9-81,
Patio Houses**

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by revising Section 3-9-81, Patio Houses; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Revisions to Section 3-9-86,
Swimming Pools**

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by revising Section 3-9-86, Swimming Pools; providing for revised location requirements; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Revisions to Section 3-9-89, Visibility at
Road Intersections**

Legislative

Countywide

An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida, Chapter 3-9, Zoning, by revising Section 3-9-89, Visibility at Road Intersections; providing for revised requirements regarding clear sight triangles; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

Ms. Shao requested Board's approval, noting that staff was ready to answer any questions the Board may have.

Questions for Staff

Chair Hess called for comment on the first section.

Mr. Gravesen said he had some typographical items to bring to the attention of staff; **Ms. Shao** noted his suggested corrections, commenting that some issues had already been discovered by staff and corrected. Regarding the suggestion to begin numbering of the sections of Code under Article IV at 100 instead of 91 (e.g., 3-9-100) to allow for future sections to be added, **the Chair** asked if that needed to be made part of the motion, and **Assistant County Attorney Josh Moya** concurred.

Moving on to the Buffering and Landscaping material, **the Chair** indicated she was on board with the suggested changes. There were no Board member or public comments on this section, so the Board moved on to the next item, Amendments. **Chair Hess** asked about who the entities were who may have "a legal interest in the property" – did that still include the Commissioners? **Mr. Moya** said that it would refer to any owner of record, whether an individual or a trust or whatever other form the entity might take. He requested Zoning Official Shaun Cullinan to comment further; **Mr. Cullinan** said the phrase "legal interest in the property or this Chapter" is where legal interest is established which pertains to the Commission.

Chair Hess next questioned changes to standards for the Planning Board; new language eliminates "h", consideration of "whether there are substantial reasons why the property cannot be used in accordance with the existing zoning." She stated that has long been a primary standard, and asked for the rationale behind the change. **Mr. Cullinan** responded that any requested change has to be consistent with the Future Land Use; additionally, for anything coming before this Board, you have to look at the requested changes on the merits; anything can be used under the current zoning, the issue is why they want to change it, for what purpose, what are the merits, the technical aspects, etc.

Chair Hess observed that in her understanding of the quasi-judicial hearing process, the burden is on the applicant to prove by substantial evidence that the zoning is no longer applicable, and item "h" underwrites that legal requirement. If the property can be used under its current status, there is no denial of property rights; **Chair Hess** mentioned the recent landfill application, noting this was the standard the decision was principally based on, and there was no denial of rights there. **Mr. Cullinan** said that the Board could object to that change and request to keep standard "h" in the standards. **Chair Hess** acknowledged that in some circumstances (e.g., regarding AG land), profitability might seem to make it appropriate; but if the right to agriculture is important also, that could be the basis for denying a request to rezone. She asked if anyone had an objection to her position regarding keeping standard "h".

Mr. Rob Berntsson addressed this issue as part of the Public Comment. He stated that there are several ordinances that require rezoning to PD for certain uses; in that circumstance, the section in question is inappropriate because, he said, the County is requiring the PD and then asking why the property can't be used in accordance with the current zoning. **Mr. Berntsson** also stated that zoning is supposed to be for the best, highest use for the property; so while current zoning may be "OK", the 'best, highest' use might be something different. So from the practitioners' point of view, this standard is outdated.

Chair Hess and Mr. Berntsson further debated the issue, with Chair Hess taking the position that it is the duty of the applicant's representative to prove that current zoning is no longer applicable (not that the property can't be used under the current zoning), and Mr. Berntsson responding that the applicant doesn't have to prove it can't be used under current zoning, since if that was true, the owner would have a taking claim against the county. **The Chair** conceded this point, but indicated that she continued to feel the change would be inappropriate; **Mr. Berntsson** suggested that she should come to the zoning roundtable and make her argument to the group for further consideration before the matter goes on to the Commission. **Chair Hess** emphasized that her concern was that the matter be too open to interpretation, rather than resting on substantial evidence; she felt the matter should go back to the group for further effort to arrive at language that was neither so strict nor so liberal as "appropriate".

The Chair asked if there were any further questions on agenda item three; **Mr. Gravesen** asked, regarding page 3, postponement of public hearings, whether there the ability for the P&Z Board itself to postpone hearings; is that part of the Board's power, or

does that authority arise from this ordinance. **Mr. Moyer** responded that the Board does have that power, but that it should be stated just to make that clear. **Mr. Gravesen** noted that he wasn't suggesting language, but just trying to establish whether the Board already had the power to postpone a hearing and it doesn't actually need to be stated in this section. **Chair Hess** said the matter should go back for rewrite along with the other passage just covered.

Mr. Cullinan commented that Boards always have an inherent right to postpone; the language on postponement is being included here simply to put citizens on notice that such a thing can happen. Further discussion ensued on this topic. **Mr. Moyer** noted a few more typographical issues in the paragraph numbering; **Mr. Gravesen** noted that this is titled *Article III* and that should be *Article I* at the top of each page. He also commented on the section numbering.

The Board next took up agenda item four: 3-6-69, Conditional Uses which **Chair Hess** noted adds reference to types of repair uses (e.g., for auto repairs) where previously the language didn't distinguish between major and minor repairs. This distinction is essential particularly where there is proximity to less intense uses or residential uses. No public comment was offered on this section.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Vieira** with a unanimous vote.

Discussion

Chair Hess recapped briefly the fact that only item three had been problematic.

Recommendation

Mr. Gravesen moved that Land Development Regulations Table of Contents be sent to the Board of County Commissioners with a recommendation of *Approval and with the recommendation that section numbers in new Article IV start at 3-9-100 instead of 3-9-91 to provide for future material to be added*, based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

Mr. Gravesen moved that the amendments to the Buffers, Landscaping, and Tree Requirements Code be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

Some discussion then ensued to determine what the motion should indicate regarding agenda item three, e.g., whether it would be coming back to the P&Z Board after reconsideration; Mr. Moyer suggested that the idea was to approve with a recommendation that staff review it before it goes on to the Board of County Commissioners, and not come back before this Board; Chair Hess indicated she wasn't comfortable with the idea of not seeing how the recommendations were handled before it went to the Commission.

Mr. Gravesen moved that Sec. 3-9-11, Amendments, be reviewed and item "h" of the Standards for Approval be restated or be modified rather than eliminated, and item m, Postponement of Scheduled Public Hearings, be reviewed for language acknowledging the P&Z Board's ability to postpone as well, and brought back to this Board at its next meeting, based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

Mr. Gravesen moved that Sec. 3-9-69, Conditional Uses and Structures, be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

The Board turned next to agenda items 5-8; the first to be considered was 3-9-77, Manufactured Homes & Recreational Vehicles. **Chair Hess** noted that this changes commercial storage of these vehicles to CG from CI and asked why; **Ms. Shao** responded this was because the County no longer has the CI District, only CG, and particular uses are now covered by conditions. **Chair Hess** expressed concern over the prospect of acres of stored vehicles, which would not be appropriate; she asked if there were conditions specifically for that situation. **Ms. Shao** asked for a moment to check for the language that covers this; after a moment, she reported that the conditions to store these vehicles in CG required that they be inside a building. **Chair Hess** asked about the situation where a neighbor with an RV, which can't be in the driveway; **Ms. Shao** responded that residents owning their own RV can have it on their residential property.

Next to be discussed was agenda item six regarding patio houses; **the Chair** noted that this was amended to refer to conditional uses and is cross-referenced to the subdivision regulations. She called for comments; none were offered.

Agenda item seven concerns swimming pools. **Chair Hess** asked for clarification regarding the phrase "leading edge" of the living area; **Mr. Cullinan** responded that it referred to the frontmost edge of the residence, therefore the pool can only be located on the side or in the back yard. **Mr. Gravesen** asked about whether the garage is considered the leading edge; **Mr. Cullinan** said that if it is integrated into the house, then yes. **Mr. Gravesen** responded that this would not necessarily be considered the "living area". **Mr. Cullinan** said it had been so interpreted in the past, but staff could revisit that. **Chair Hess** asked whether this meant pools were not allowed in AG and EM districts; **Mr. Cullinan** responded that they are not restricted by this language, and can place a swimming pool anywhere on the property within the required setbacks.

Agenda item eight is the final of the special regulations, dealing with visibility on the road; **Chair Hess** indicated she had complete confidence in staff's expertise in this matter. No public comments being offered, nor discussion prior to motion, the public hearing was closed on motion by **Mr. Gravesen**, seconded by **Mr. Vieira**.

Mr. Gravesen moved that Sec. 3-9-77, Manufactured Homes and Recreational Vehicles, be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Chandler** and carried by a unanimous vote.

Mr. Gravesen moved that Sec. 3-9-81, Patio Houses, be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Chandler** and carried by a unanimous vote.

Mr. Gravesen moved that Sec. 3-9-86, Swimming Pools, be sent to the Board of County Commissioners with a recommendation of *Approval pending a modification to indicate the leading edge of the building instead of the living area*, based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

Mr. Gravesen moved that Sec. 3-9-89, Visibility at Road Intersections, be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated February 24, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

There being no further business to come before the Board, the meeting was adjourned at 2:15 p.m.